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Zulkifli bin Majinji v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO
S-05-2-01 OF 2013
ROHANA YUSUF, IDRUS HARUN AND ZAMANI A RAHIM JJCA
21 APRIL 2016

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Criminal Law — Murder — Defence — Defence of unsound of mind due to abuse of syabu — Appellant heard voice — Appellant stabbed deceased — Whether appellant person of unsound mind at time of killing — Burden of proof — Whether defence of unsound mind established on balance of probabilities — Whether appellant conscious that what he doing was wrong — Penal Code ss 84 & 302

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Criminal Law — Penal Code — s 302 — Murder — Appeal — Whether prima facie case proven — Whether conviction by trial judge safe

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The appellant was charged with the murder of one Nor Bangsa bin Amir Bangsa ('the deceased') pursuant to s 302 of the Penal Code ('the Code'). The prosecution case was that, on the day of the incident, the deceased together with his wife ('PW5'), his son and his daughter were watching television when suddenly the appellant entered his house and stabbed him on the left side of his chest with a spear. PW5 and the deceased's brother, PW6 testified that they saw appellant fled the house after the incident. The appellant was then arrested by the police officer ('PW8') on the same day. Upon the arrest, the appellant had led PW8 to the scene of the incident where a spear ('exh P14A') was recovered.

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The pathologist stated that the stab wound found on the deceased's left chest was fatal and the cause of death was hypovolaemic shock due to the stab wound. There was also DNA profiling of the deceased found on exh P14A as confirmed by the chemist. At the end of the prosecution case, the learned trial judge found that prima facie case was proven against the appellant and ordered the appellant to enter his defence. In his defence the appellant said that the deceased was his superior and there was no animosity between him and the deceased. The appellant also stated that as he worked at the oil palm plantation, he was provided with a spear for harvesting but contended that he kept the spear at his workplace and not at home. He further denied that exh P14A was the spear he used for harvesting. The appellant also put up the defence of unsoundness of mind. At the conclusion of the trial, the appellant was found guilty of the charge and sentenced to death. Hence, this appeal.

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Held, dismissing the appeal and affirming the conviction and sentence by the High Court:

- (1) The appellant had merely asserted that he was a drug addict and he had taken *syabu* prior to the murder. He had been hearing voices that the deceased was going to kill him, if he did not kill him first and that at the material time he was unconscious of what he was doing. There was also evidence that he was sent to the mental hospital for observation but the report was not disclosed to the court neither did the psychiatrist was called to testify regarding the mental state of the appellant at the time of committing the murder. The burden of proof was on the appellant to prove the defence of unsoundness of mind under s 84 of the Code on the balance of probabilities. Since the appellant had failed to prove that at the time of committing the offence, he was of unsound mind, thus, the defence of unsoundness of mind was not established (see paras 17–18).
- (2) There was clear evidence from PW5 which was corroborated by the evidence of PW6 that the appellant had fled the house after stabbing the deceased. The fact that the appellant ran away after stabbing the deceased and the totality of his conduct showed that at the time he committed the offence, he was conscious that what he was doing was wrongful. Thus, the facts were not strong enough to give him an exemption from criminality of his conduct under s 84 of the Code. The conviction by trial judge was therefore safe (see paras 19 & 21).

[Bahasa Malaysia summary]

Perayu dituduh membunuh seorang yang bernama Nor Bangsa bin Amir Bangsa ('si mati') berikutan s 302 Kanun Keseksaan ('Kanun'). Kes pihak pendakwaan adalah bahawa, pada hari kejadian, si mati bersama isterinya ('PW5'), anak lelaki dan anak perempuan menonton televisyen tiba-tiba perayu memasuki rumah dan menikamnya di sebelah kiri dadanya dengan lembing. PW5 dan saudara lelaki si mati, PW6 memberi keterangan bahawa mereka melihat perayu melarikan diri dari rumah tersebut selepas kejadian. Perayu kemudiannya ditangkap oleh pegawai polis ('PW8') pada hari yang sama. Selepas penangkapan, perayu membawa PW8 ke tempat kejadian di mana lembing ('exh P14A') ditemui. Ahli patologi menyatakan bahawa luka tikaman yang didapati di bahagian kiri dada si mati adalah serius dan sebab kematian adalah kejutan hypovolaemic akibat luka tikaman. Juga terdapat profil DNA si mati didapati atas eksh P14A seperti yang disahkan oleh ahli kimia. Pada akhir kes pihak pendakwaan, hakim perbicaraan yang bijaksana mendapati bahawa kes prima facie dibuktikan terhadap perayu dan memerintahkan perayu untuk memasukkan pembelaannya. Dalam pembelaannya perayu menyatakan bahawa si mati adalah ketuanya dan tidak terdapat perasaan marah di antara dia dan si mati. Perayu juga menyatakan bahawa oleh kerana dia bekerja di ladang kelapa sawit, dia diberikan lembing untuk kerja-kerja memetik tetapi berhujah yang dia menyimpan lembing

A tersebut di tempat kerjanya dan bukan di rumah. Dia selanjutnya menfailkan yang eksh P14A adalah lembing yang dia gunakan untuk kerja-kerja memetik. Perayu juga mengemukakan pembelaan ketaksempurnaan akal. Pada akhir perbicaraan, perayu didapati bersalah terhadap tuduhan dan dijatuhkan hukuman mati. Maka rayuan ini.

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Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman oleh Mahkamah Tinggi:

- C (1) Perayu hanya menegaskan yang dia adalah penagih dadah dan telah mengambil syabu sebelum pembunuhan tersebut. Dia telah mendengar suara yang si mati akan membunuhnya, jika dia tidak membunuhnya terlebih dahulu dan pada masa material dia tidak sedar dengan apa yang dibuat olehnya. Juga terdapat keterangan bahawa dia dihantar ke hospital mental bagi pemerhatian tetapi laporan tidak didedahkan kepada mahkamah juga pakar psikiatri tidak dipanggil untuk memberi keterangan berkaitan keadaan mental perayu pada masa melakukan pembunuhan tersebut. Beban pembuktian adalah ke atas perayu untuk membuktikan pembelaan ketaksempurnaan akal di bawah s 84 Kanun atas imbalan kebarangkalian. Memandangkan perayu telah gagal untuk membuktikan bahawa pada masa melakukan kesalahan, dia adalah tak sempurna akal, oleh itu, pembelaan ketidaksempurnaan akal tidak dibuktikan (lihat perenggan 17–18).
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- F (2) Terdapat keterangan jelas daripada PW5 yang disokong oleh keterangan PW6 bahawa perayu telah melarikan diri dari rumah tersebut selepas menikam si mati. Fakta bahawa perayu melarikan diri selepas menikam si mati dan keseluruhan tingkah lakunya menunjukkan bahawa pada masa dia melakukan kesalahan, dia sedar yang apa yang dibuat olehnya adalah salah. Oleh itu, fakta tidak cukup kukuh untuk memberikannya pengecualian daripada kriminaliti terhadap tingkah lakunya di bawah s 84 Kanun. Sabitan oleh hakim perbicaraan oleh itu adalah selamat (lihat perenggan 19 & 21).]
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Notes

- H For cases on defence for murder, see 4(2) *Mallal's Digest* (5th Ed, 2015) paras 1756–1805.
For cases on s 302, see 4(2) *Mallal's Digest* (5th Ed, 2015) paras 2141–2279.

Cases referred to

- I *Dourin bin Murah v PP* [2013] 5 MLJ 856, CA (refd)
John a/k Nyumbei v PP [2007] 7 MLJ 206; [2007] 2 CLJ 509, CA (refd)
Selvaraju Mudaliar a/l Kalliparamal v PP [2010] 6 MLJ 293; [2010] 8 CLJ 160, CA (refd)

Legislation referred to

Penal Code ss 84, 302

Appeal from: Criminal Trial No SDK-45-03/2 of 2012 (High Court, Sandakan)

*Sharatha Masyaroh bt John Ridwan Lincon (Lincon & Co) for the appellant.
Farah Ezlin bt Yusop Khan (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.*

Zamani A Rahim JCA:

INTRODUCTION

[1] Zulkifli bin Majinji, the appellant was charged in the High Court of Sabah and Sarawak at Sandakan with the murder of one Nor Bangsa bin Amir Bangsa ('the deceased') aged 38 years, an offence under s 302 of the Penal Code, on 25 July 2011, at about 3.30pm at the house No 6B, Staff Quarters, Ladang Pertama, Duta Plantations, Telupid, Beluran, Sabah. The charge reads as follows:

The Charge

That you on the 24th day of July 2011 at about 3.30 pm at house number 6B, Staff Quarter, Ladang Pertama, Duta Plantations, Telupid, in the District of Beluran, in the State of Sabah, did commit murder by causing the death of one Nor Bangsa bin Amir Bangsa (Male/38 years old), and that you have thereby committed an offence punishable under section 302 of the Penal Code.

THE PROSECUTION'S CASE

[2] The prosecution's case is simple and straightforward. On 24 July 2011 at about 3.30pm, the deceased and his family consisting of his wife, Siau Duragasan ('PW5'), his son, Nor Amin bin Nor Bangsa and daughter, Azminah bt Nor Bangsa were watching television in the living room of their house. The deceased was lying down.

[3] At this material time, all of a sudden the appellant entered the deceased house. The appellant was the deceased's next door neighbour. The appellant stabbed the deceased on the left side of his chest. The stabbing was witnessed by PW5 and her two children. After the stabbing, the appellant fled the deceased's house. It was witnessed by the deceased's brother, Mohamad Ali bin Amir Bangsa ('PW6'). The appellant was seen running towards the bushes in the oil palm plantation.

- A** [4] The police was alerted of the incident. At about 4pm a team of police personnel led by the officer in charge of Telupid Police Station, SM Rosman Rood ('PW8'), visited the scene.
- B** [5] On the same day, at about 5.05pm the appellant was arrested. He led PW8 to the scene of incident where a spear (locally known as 'bujak'), exh P14A allegedly used by the appellant to stab the deceased, was recovered. The exh P14A and a pillow were seized.
- C** [6] The deceased's body was removed to the Duchess of Kent, Hospital at Sandakan where a post-mortem was conducted by the pathologist, Dr Jessie Hiu ('PW7'). PW7 found two stab wounds on the deceased's body – one on the left chest and the other at the back. The stab wound on the left side of the deceased's chest was fatal. The cause of death was confirmed by PW7 to be hypovolaemic shock due to or as a consequence of the stab wound on the chest.
- D** [7] The exh P14A and the pillow were sent to the chemistry department for analysis. Upon analysis by the chemist, Rita Tie Ung Ha ('PW11'), the blade of exh P14A was found to be presence with the DNA profiling of the deceased.
- E** Findings of the trial judge at the close of the prosecution's case:
- F** (a) though PW5 may be an interested witness being the wife of the deceased, her evidence should not be rejected outright, until cogent reasons were furnished. PW5 was a reliable eyewitness;
- G** (b) PW5 was in a state of shock at the time she saw the deceased being stabbed. Before that she was normal. She saw the appellant entered her house through the front door. She saw the appellant's face clearly;
- (c) the evidence of PW5 that the deceased was stabbed by the appellant with a spear (locally known as 'bujak') was corroborated by the evidence of the pathologist, PW7. PW7 opined that the two stab wounds bearing two cutting surfaces were caused by a sharp object with double cutting edges such as a keris or a spear;
- H** (d) the evidence of PW5 who said that the appellant escaped from her house after stabbing the deceased was also corroborated by the evidence of PW6. This evidence was admissible as subsequent conduct of the appellant after the commission of the crime;
- I** (e) upon his arrest, the appellant led PW8 to the living room of the deceased's house where the spear exh P14A was recovered. Having sent exh P14A to and analysed by the chemist PW11, the blade of exh P14A was found to be detected with the DNA profiling of the deceased, indicating that the exh P14A was used by the appellant to stab the deceased;

- (f) the appellant was identified in the dock by PW5 as the assailant/killer of the deceased. The defence did not challenge the correctness of this identification. Neither was there any suggestion from the defence of any possibility of a mistaken identity; **A**
- (g) the defence also did not dispute the evidence of PW5 that it was the appellant who entered her house, stabbed the deceased and ran away. The appellant's escape from the deceased's house was corroborated by the evidence of PW6 whose evidence was accepted by the trial judge; **B**
- (h) based on the totality of the evidence adduced by the prosecution, the trial judge found that the prosecution had proved its case against the appellant; **C**
- (i) the intention of the appellant to kill the deceased may be inferred on the below mentioned facts:
 - (i) the appellant armed himself with the spear when he entered the deceased's house. There was no sudden fight, not even an argument and the deceased was caught by surprise; **D**
 - (ii) the spear was a lethal weapon – a long handle with a double edged cutting blade that tapered at the tip; **E**
 - (iii) a considerable force was used by the appellant to stab the left side of the deceased's chest. The depth of the wound was 13cm and it penetrated into the chest cavity and the abdominal cavity. It cut the left sixth intercostals muscle, diaphragm, stomach, pancreas and the two main blood vessels of the abdomen and the backbone. These were the vital organs in a human body; **F**
 - (iv) the injuries described in para (c) above were fatal in nature and unlikely to survive even if the deceased was brought expeditiously to the hospital for treatment. The stab wound suffered by the deceased was sufficient in the ordinary course of nature to cause death; and **G**
 - (v) the appellant immediately escaped from the deceased's house upon stabbing the deceased; and **H**
- (j) based on the above evidence, the trial judge found that the prosecution had succeeded in establishing a prima facie case of murder against the appellant as charged. The appellant's defence was called. **I**

DEFENCE CASE

[8] The appellant elected to give evidence on oath. The appellant originated from the Phillipines. He came to Sabah and stayed at Kampung

A Forest, Sandakan. He worked as a labourer at IJM, 6th Mile, Sandakan for about ten years. After that he went back to the Phillipines.

B [9] Then the appellant returned to Sandakan again. He worked at the oil palm plantation at Ladang Pertama, Telupid. The deceased was his supervisor. He lived with his family at the workers quarters No 5, next door to the deceased's house. The deceased was known to the appellant as Nol. He was employed there for about four months before the incident.

C [10] In harvesting oil palm fruits, he was provided with a spear. He kept the spear at his workplace and not at home. Upon being shown exh P14A, he denied that it was his spear that he used to harvest the fruits.

D [11] The appellant said that there was no animosity between him and the deceased.

Findings of the trial judge at the conclusion of the trial:

E (a) most of the time, in his defence the appellant continuously said 'don't know' and 'can't remember' in his answers or replies. The trial judge summarised the appellant's evidence-in-chief and cross-examination in paras 49 and 50 of Her Ladyship's judgment as follows:

F [49] The examination-in-chief of the accused continued with him mainly giving 'don't know' answers when asked to explain the material aspects of the case for the prosecution. He gave 'I don't know' answers when asked to explain or rebut the evidence of PW5 that she saw him stabbing the deceased with the spear P14A and then saw him run away. He gave a 'yes' and then a 'no' answer to the question whether he had stabbed the deceased with the spear P14A that was shown to him in court. Eventually, he claimed not to remember whether he had stabbed the deceased with the same spear. He was asked to explain if he had admitted to the police that P14A was the spear he used to stab the deceased, his initial answer was 'yes'. But, after defence counsel had repeated the question, he changed his answer to that of 'no, never'. He confirmed that he had told PW14 that he had lost his mind and that prior to the incident i.e the murder of the deceased, he had been hearing voices that the victim was going to kill him if he did not kill him first. He claimed to have taken syabu at that time and that when he did take syabu the effect would last a week and he was not conscious of what he was doing.

H [50] Under cross-examination, the accused came up with the 'I can't remember answer to most questions. However, he claimed to remember that he had taken syabu at the time of the murder of the deceased. He reverted to his 'don't know' answer when it was put to him that it was him that had stabbed the deceased with the spear with intention to cause the bodily injuries inflicted. He stated in re-examination that he took syabu four times a month and that he could not remember what happened on the 24 July 2011 ie the day of the killing of the deceased'.

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- (b) the trial judge found the appellant to be untruthful and unreliable witness as his answers were dithering and contradictory; A
- (c) the appellant had put up the defence of unsoundness of mind. The burden was on the appellant to establish such a defence on the balance of probabilities. The appellant did not produce any phychiarist or medical reports or other records to support his assertions that he was of unsound mind. He only made a bald assertion of unsoundness of mind; B
- (d) there was also no evidence to show that the appellant was a cronic and habitual drugs user or he had taken *syabu* immediately prior to the killing of the deceased. He had also been hearing voices that the deceased would kill him, if he did not kill the deceased first; C
- (e) as such the trial judge found that the evidence was lacking to show, on the balance of probabilities, that the appellant was so influenced by consuming the drugs so as to make him a person of unsound mind at the time he killed the deceased. Or that he was incapable of knowing that his act of killing the deceased was either wrong or contrary to law. Thus the defence had failed to raise any reasonable doubt on the prosecution's case; and D
- (f) the trial judge found the appellant guilty of murder as charged, an offence under s 302 of the Penal Code. He was sentenced to death. E

THE APPEAL

[12] There are ten grounds of appeal listed in the petition of appeal. However, learned counsel narrowed down the grounds to one ground only before us namely, the mental state of the appellant at the time of committing the murder. The appellant was said to be under the influence of the drug *syabu* causing him to lose his memory or recollection: see *Selvaraju Mudaliar a/l Kalliparamal v Public Prosecutor* [2010] 6 MLJ 293; [2010] 8 CLJ 160. In other words, he was a person of unsound mind who had no intention to kill the appellant. The issue of the apellant's mental state was sufficiently couched in grounds No 7 and No 9 of the petition of appeal which state as follows: F

(7) The Learned High Court judge erred in law and in fact in failing to determine the mental condition of the appellant at that material time; G

(9) The Learned High Court judge erred in law and in fact in holding that there was nothing to support the evidence of the appellant that he had taken *syabu* prior to the time of the killing and thus was not conscious of what he was doing, in other words, unsound in mind. H

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A OUR DECISION

B [13] Learned counsel complained that the trial judge had erred in law and in fact in failing to determine the mental state of the appellant at the material time. Prior to stabbing the deceased, the appellant's claimed that he had taken the drug *syabu* which induced in him a state of mind as to make him incapable of knowing the nature of his act or that he committed the crime. In other words, the appellant claimed that he was a person of unsound mind.

C [14] The defence of unsoundness of mind is provided under s 84 of the Penal Code. A person is exculpated under s 84 on account of his or her lacking capacity to know the nature of the act or that it was either wrong or contrary to law. The legal principle on this subject is well illustrated in this court's decision in *John alk Nyumbei v Public Prosecutor* [2007] 7 MLJ 206; [2007] 2 CLJ 509.

D It is as follows:

10. The law on unsoundness of mind as a complete defence in our criminal jurisprudence is, as was correctly submitted by learned counsel for the appellant, contained in s 84 of the Penal Code. It states:

E 84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

F 11. This section exempts a person found to be insane of any criminal responsibility if it is found that he is 'incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law' (see commentary in *Ratanlal and Dirajlal's Law of Crimes* (25th ed) p 280). The learned authors there further commented that a person 'is not protected if he knew that what he was doing was wrong, even though he did not know that it was contrary to law, and also, if he knew what he was doing was contrary to law even though he did not know that it was wrong'.

G 12. Thus, under s 84 of the Penal Code, criminality has to be determined according to that legal test and not merely by the mental state of an accused person according to the medical test.

H 13. There is a distinction between the notion of a legal insanity and medical insanity. Not every form of insanity exempts a person from criminal responsibility. Only legal insanity provides that exemption under s84 Penal Code. The specie of insanity addressed by s 84 is the one that impairs the cognitive faculties of a person. Its nature and extent must be that to make the offender incapable of knowing the nature of his act, or that he is doing is wrong or contrary to law. The criminality of an act therefore must be determined by this test laid down in s 84 as distinguished from the medical test (see *Ratanlal and Dirajlal's Law of Crimes* (25 ed) p 280). As was stated recently by this court through the judgment of Ariffin Zakaria JCA (as he then was) in *Public Prosecutor v Muhammad Suhaimi Abdul Aziz* [2004] 1 CLJ 378.

I 14. When the defence of insanity is raised the court thus needs to consider two matters, namely:

- (i) whether the accused person has successfully established, as a preliminary issue, that at the time of committing the act he was of unsound mind, and
- (ii) if he was of unsound mind, whether he has proven that his unsoundness of mind was of a degree to satisfy one of the tests earlier mentioned ie, that the accused was incapable of knowing the nature of his act as being wrong or against the law (see *Ratanlal and Dirajlal's Law of Crimes* (5th ed) p 289 et seq).

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15. It is also settle law that the burden of proof rests on the person who raised the defence of insanity (see *Juraimi bin Hussein v Public Prosecutor* [1998] 6 CLJ 383 also *Baharom v Public Prosecutor* [1960] 2 MLJ 249). And it is only the accused person who has this right to raise a defence of insanity. It is not open to the court or the prosecution to raise it (see *Public Prosecutor v Misbah bin Saat*).

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16. The standard of proof upon the accused raising the defence of insanity is on a balance of probabilities, as in a civil case (*Rajagopal v Public Prosecutor* [1977] 1 MLJ 6, *Goh Yoke v Ppublic Prosecutor* [1970] 1 MLJ 63). So, if the appellant here is able to show, either from the prosecution or other evidence that he committed the crime but was at that time insane, he cannot be culpable by virtue of s 84 Penal Code.

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[15] The defence sought to establish the defence of unsoundness of mind under s 84 through the appellant himself. The appellant was the sole witness. He was found to be not a reliable and truthful witness. This is how the trial judge described the appellant's credibility at p 191 para 54 of the appeal record, Vol 1 and it is as follows:

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[54] In my view the accused's 'I don't know' answers to whether he agreed with PW5's evidence that he stabbed the accused with P14A and had then run away from the scene is neither here nor there for it is neither a dispute, nor a denial nor agreement. More damning for the accused was the way he vacillated between admitting to stabbing the deceased with the spear, then not knowing and then not remembering. Either way, his dithering and contradictory answers must necessarily be ground for believing that he was not a truthful witness. In the result, the accused had not come up with any explanation at all on this aspect of the evidence for the prosecution let alone rebutting it or raising a reasonable doubt.

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[16] As a first preliminary issue as stated in *John Nyumbei's* case, the defence in this case had merely asserted that the appellant had told P14 that he was a drug addict. He had taken *syabu* prior to the murder and had been hearing voices that the deceased was going to kill him, if he did not kill him first. At the material time, he was not conscious of what he was doing. Further, there was also evidence that the appellant was sent for observation at the Mental Hospital, Bukit Padang, Kota Kinabalu for almost two months. The report of observation was never disclosed to the court. Neither the medical officer or phychiarist from the hospital was called to testify regarding the mental state of the appellant at the time of committing the murder. In the case of *Dourin bin Murah v Public Prosecutor* [2013] 5 MLJ 856 this court had expressed its view

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A on this issue as follows:

Hence it was our view that the appellant cannot avail himself of the defence provided for under s 84 of the Penal Code. Furthermore this sort of defence requires the calling of expert medical evidence to enlighten the court the mental condition of the appellant. There was no such evidence before the court.

B Accordingly for reasons stated above, we dismiss the appeal and affirm the decision of the learned judge.

C [17] The burden of proof is on the appellant to prove the defence of unsoundness of mind under s 84 on the balance of probabilities. The defence had, therefore, failed to prove the preliminary issue that at the time of committing the killing, he was of unsound mind. That being the case, the defence of unsoundness of mind was not established.

D [18] Assuming that the defence had succeeded in establishing the aforesaid preliminary issue (which is denied), the defence had still to prove that his unsoundness of mind was to a degree that it impaired or caused his cognitive faculties making him incapable of knowing the nature of his act, or that what he is doing is wrong or against the law. As alluded to earlier, there was clear evidence from PW5 which was corroborated by the evidence of PW6 that the appellant, after stabbing the deceased, had immediately fled from the house. Later events showed that the appellant was apprehended by the workers in the bushes and handed over to PW8. The fact that he ran away after stabbing the deceased and the totality of his conduct showed that at the time he committed the offence, he was conscious that what he was doing was wrongful. As such the facts were not strong enough to give him an exemption from the criminality of his conduct under s 84.

G [19] In light of the evidence, the gist of which is alluded above, we do not think that the plea of unsoundness of mind or the defence of insanity has been established in this case.

H [20] In the upshot, we are of the unanimous view that the trial judge had not erred in law and fact warranting our intervention. The conviction was safe and the decision of the trial judge is affirmed.

Appeal dismissed; conviction and sentence by the High Court affirmed.

Reported by Dzulkarnain Ab Fatar

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